

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NEIL A. MCGINNIS,

Petitioner,

v.

STATE OF WASHINGTON
SPOKANE COUNTY JAIL,

Respondent.

NO: CV-12-062-RMP

ORDER DISMISSING PETITION

By Order filed February 9, 2012, the Court granted Petitioner leave to proceed *in forma pauperis* and directed him to show cause within twenty one (21) days why this action should not be dismissed for lack of jurisdiction. ECF No. 7. Petitioner had failed to name a proper Respondent. *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). The Court also instructed Petitioner to show cause why this action should not be dismissed on the basis of the *Younger* abstention doctrine due to apparent, on-going state court criminal proceedings.

1 On March 1, 2012, the Court received a letter from Mr. McGinnis, asserting,
2 "due to the ongoing threats by Police Chief of Spokane and Spokane Jail
3 Commandor [sic] John McGrath, and due to the Jailors assaults and ongoing
4 torture I am deliberately forced by such parties as to involuntarily ask to drop all
5 pending matters before this court." He further states, "Torture is a recorded
6 incident by Jailors as they use computers to initiate the weapons 'ammunition' to
7 dispense its physics to induce malicious inflictions of retaliatory vindictive hate."

8 Mr. McGinnis' assertions in the letter are not responsive to the Order to
9 Show Cause, ECF No. 7. Furthermore, the Court notes his claims of an elaborate
10 electronic system, allegedly used to torture him, are substantially similar to those
11 claims presented and deemed frivolous in a recent civil rights complaint, cause
12 number CV-11-404-EFS.

13 If Petitioner wishes to assert claims that specific correctional officers used
14 excessive force against him, he may do so in a separate cause of action for which
15 he will be required to pay the \$350.00 filing fee. Petitioner must present a clear and
16 concise statement of facts, including dates and times, showing specific instances
17 when identified Defendants used excessive force.

18 Petitioner should be mindful an Eighth Amendment violation occurs only
19 when a prison official applied force "maliciously and sadistically to cause harm."
20 *Hudson v. McMillian*, 503 U.S. 1, 7 (1992). To determine whether the use of force

1 was wanton and unnecessary, relevant factors include: "the extent of injury
2 suffered [,] . . . the need for application of force, the relationship between that need
3 and the amount of force used, the threat [to the safety of staff and inmates]
4 'reasonably perceived by the responsible officials,' and 'any efforts to temper the
5 severity of a forceful response.'" *Id.* (quoting *Whitley v. Albers*, 475 U.S. 312, 322
6 (1986). There is no Eighth Amendment violation if "force was applied in a good-
7 faith effort to maintain or restore discipline. . . ." *Id.*

8 At this time, **IT IS ORDERED** the present habeas petition is **DISMISSED**
9 **without prejudice** for lack of jurisdiction. The court will abstain from intervening
10 in any on-going state court criminal proceedings under *Younger v. Harris*, 401
11 U.S. 37, 53-54 (1971).

12 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
13 Order, enter judgment of dismissal, forward a copy to Petitioner, and close this file
14 The Court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from
15 this decision could not be taken in good faith, and there is no basis upon which to
16 issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R.App. P. 22(b).

17 **DATED** this 21st day of March 2012.

18
19
20 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
Chief United States District Court Judge